

**FIRST AMENDMENT TO
PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE NEBRASKA STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE NEBRASKA DEPARTMENT OF TRANSPORTATION
TO SATISFY THE REQUIREMENTS OF SECTION 106
FOR THE FEDERAL-AID HIGHWAY PROGRAM
IN THE STATE OF NEBRASKA**

WHEREAS, the Programmatic Agreement was executed on February 1, 2023;

WHEREAS, Title 23 USC Section 327 (23 USC 327) allows the U.S. Department of Transportation (USDOT) Secretary, acting through FHWA, to assign certain responsibilities for environmental review and compliance with the National Environmental Policy Act of 1969 (NEPA), Section 106, and other Federal environmental laws to a State Department of Transportation through a Memorandum of Understanding (MOU), with assignment of such responsibilities referred to throughout this amendment generally as “327 Assignment”; and

WHEREAS, NDOT and FHWA, entered into a 327 Assignment MOU on February 23, 2026 concerning the State of Nebraska’s participation in the Federal-aid Highway Program (FAHP) in which FHWA assigned and NDOT assumed FHWA’s responsibilities under the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act of 1966, as amended and associated implementing regulations at 36 CFR Part 800; and

WHEREAS, pursuant to the 327 Assignment MOU, NDOT is deemed to be a federal agency for all FAHP projects it has assumed, and in that capacity, NDOT assigned the role of “agency official” to the NDOT Director for the purpose of compliance with 36 CFR Part 800; and

WHEREAS, FHWA Nebraska Division Administrator retains responsibility for environmental review, consultation and decision-making for specific undertakings identified in the 327 Assignment MOU, and therefore shall be the “agency official” for those specific undertakings; and

NOW, THEREFORE, in accordance with Stipulation XII.D of the Programmatic Agreement, the Federal Highway Administration, the Nebraska State Historic Preservation Office, the Nebraska Department of Transportation, and the Advisory Council on Historic Preservation agree to amend the Agreement as follows:

1. Replace Stipulation I.C:

Other federal agencies may issue permits, licenses, and approvals and otherwise provide assistance for undertakings covered by this Agreement, including those involving federal land, and in such circumstances, NDOT, or FHWA as appropriate, as lead federal agency may request that such agencies fulfill their NHPA Section 106 responsibilities in coordination with NDOT or FHWA by using applicable provisions of this Agreement. Such federal agencies may designate NDOT, or FHWA as appropriate, as lead federal agency pursuant to 36 CFR § 800.2(a)(2) to fulfill their responsibilities. Other federal agencies and Indian tribes participating in NDOT undertakings that have not designated NDOT or FHWA as the lead federal agency may use studies and background documentation developed by NDOT to support their own findings and determinations under 36 CFR Part 800.

2. Replace Stipulation I.D:

Should other federal agencies or Indian tribes not already party to this Agreement request in writing to participate, NDOT will notify the signatories and invited signatories and consider the request to participate. Should the signatories agree to the request, the Agreement shall be amended following the procedures in stipulation XII.D.

Signatory pages follow

SIGNATORY PAGE

**FIRST AMENDMENT TO
PROGRAMMATIC AGREEMENT
AMONG**

**THE FEDERAL HIGHWAY ADMINISTRATION,
THE NEBRASKA STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE NEBRASKA DEPARTMENT OF TRANSPORTATION
TO SATISFY THE REQUIREMENTS OF SECTION 106
FOR THE FEDERAL-AID HIGHWAY PROGRAM
IN THE STATE OF NEBRASKA**

FEDERAL HIGHWAY ADMINISTRATION

By: James R. Simerl
James R. Simerl, Acting Division Administrator
Federal Highway Administration

Date: 6/9/2026

SIGNATORY PAGE

**FIRST AMENDMENT TO
PROGRAMMATIC AGREEMENT
AMONG**

**THE FEDERAL HIGHWAY ADMINISTRATION,
THE NEBRASKA STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE NEBRASKA DEPARTMENT OF TRANSPORTATION
TO SATISFY THE REQUIREMENTS OF SECTION 106
FOR THE FEDERAL-AID HIGHWAY PROGRAM
IN THE STATE OF NEBRASKA**

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: 

Reid Nelson, Executive Director
Advisory Council on Historic Preservation

Date: June 16, 2026

SIGNATORY PAGE

**FIRST AMENDMENT TO
PROGRAMMATIC AGREEMENT
AMONG**

**THE FEDERAL HIGHWAY ADMINISTRATION,
THE NEBRASKA STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE NEBRASKA DEPARTMENT OF TRANSPORTATION
TO SATISFY THE REQUIREMENTS OF SECTION 106
FOR THE FEDERAL-AID HIGHWAY PROGRAM
IN THE STATE OF NEBRASKA**

NEBRASKA STATE HISTORIC PRESERVATION OFFICER

By: 

Daryl Bohac, Director / State Historic Preservation Officer
Nebraska State Historical Society

Date: 06/03/2026

SIGNATORY PAGE

**FIRST AMENDMENT TO
PROGRAMMATIC AGREEMENT
AMONG**

**THE FEDERAL HIGHWAY ADMINISTRATION,
THE NEBRASKA STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE NEBRASKA DEPARTMENT OF TRANSPORTATION
TO SATISFY THE REQUIREMENTS OF SECTION 106
FOR THE FEDERAL-AID HIGHWAY PROGRAM
IN THE STATE OF NEBRASKA**

NEBRASKA DEPARTMENT OF TRANSPORTATION

By:



Vicki Kramer, Director
Nebraska Department of Transportation

Date:

June 2, 2026

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE NEBRASKA STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE NEBRASKA DEPARTMENT OF TRANSPORTATION
TO SATISFY THE REQUIREMENTS OF SECTION 106
FOR THE FEDERAL-AID HIGHWAY PROGRAM
IN THE STATE OF NEBRASKA**

WHEREAS, the Federal Highway Administration (FHWA), the Nebraska State Historic Preservation Office (SHPO), the Advisory Council on Historic Preservation (ACHP) and the Nebraska Department of Transportation (NDOT) enter into this Programmatic Agreement (Agreement) pursuant to 36 CFR §800.14(b)(1); and

WHEREAS, FHWA provides funding assistance to NDOT through the Federal-aid Highway Program (FAHP), which is subject to Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended [54 United States Code (USC) 306108] and its implementing regulations at 36 CFR Part 800, generally and collectively referred to throughout this Agreement as “Section 106”; and

WHEREAS, NDOT administers FAHP-funded undertakings throughout the State of Nebraska as authorized by Title 23 USC 302 and Nebraska Revised Statute §39-1305 et al.; and

WHEREAS, FHWA and NDOT have determined that implementation of the FAHP in Nebraska may have an effect upon properties included in, or eligible for inclusion in the National Register of Historic Places (NRHP), hereafter referred to as historic properties, and has consulted with the SHPO and the ACHP pursuant to 36 CFR §800.14(b); and

WHEREAS, Title 23 USC Section 326 (23 USC 326) allow the U.S. Department of Transportation (USDOT) Secretary, acting through FHWA, to assign certain responsibilities for environmental review and compliance with the National Environmental Policy Act of 1969 (NEPA), Section 106, and other Federal environmental laws to a State Department of Transportation through a Memorandum of Understanding (MOU), with assignment of such responsibilities referred to throughout this Agreement generally as “**CE Assignment**”; and

WHEREAS, FHWA has assigned to NDOT the responsibility for project-level environmental reviews including Section 106 reviews on certain FAHP-funded Categorical Exclusions (CE Assignment) in accordance with Title 23 USC 326 as outlined in the First Renewed Memorandum of Understanding (326 MOU); and

WHEREAS, either FHWA or NDOT will serve as “lead Federal agency” for Section 106 responsibilities for purposes of compliance and having the authority to commit the agency to

any obligation it may assume under this Agreement, dependent upon whether the project or action at issue is a Project Assigned; and

WHEREAS, for Projects Not Assigned, FHWA Division is the lead Federal agency and the FHWA Division Administrator is the Agency Official for the FAHP-funded projects not assigned under the 326 MOU, and is a signatory to this Agreement; and

WHEREAS, for Projects Assigned, NDOT is deemed to be the lead Federal agency and the NDOT Director is the Agency Official for the purposes of compliance with 36 CFR Part 800 for FAHP-funded projects, and is a signatory to this Agreement; and

WHEREAS, the responsibilities of SHPO under Section 106 are to advise, assist, review, and consult with Federal agencies as they carry out their historic preservation responsibilities and to respond to Federal agencies' requests within a specified period of time, has participated in the development of this Agreement and has been invited to be a signatory to this Agreement; and

WHEREAS, FHWA and NDOT have invited ACHP to participate in development of this Agreement pursuant to 36 CFR §800.14(b) and the ACHP accepted this invitation in a letter dated October 8, 2020; and

WHEREAS, pursuant to the consultation conducted under 36 CFR §800.14(b), the signatories have developed this Agreement in order to establish an efficient and effective program alternative for taking into account the effects of the FAHP on historic properties in Nebraska and for affording the ACHP a reasonable opportunity to comment on undertakings covered by this Agreement; and

WHEREAS, FHWA and NDOT have solicited public participation from Nebraska Association of Professional Archeologists, the Nebraska Archeology Society, Restoration Exchange Omaha and Preservation Association of Lincoln, Federal and State agencies, Certified Local Governments (CLG's) (Appendix A) about this Agreement, has requested their comments, and has taken any comments received into account; and

WHEREAS, FHWA and NDOT recognize that FHWA has a unique legal relationship with Tribes established in the Constitution of the United States, treaties, statutes, and court decisions, and therefore, and regardless of whether a Project is assigned, consultation with a Tribe must recognize the government to government relationship between the federal government and the Tribes; and

WHEREAS, NDOT, FHWA, SHPO, and ACHP acknowledge that Tribes possess special expertise in assessing the NRHP eligibility of properties with tribal religious and cultural significance pursuant to 36 CFR §800.4(c)(1); and

WHEREAS, this Agreement shall not apply to undertakings that occur on or affect tribal lands as they are defined in 36 CFR §800.16(x). Tribal lands are all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities. For such undertakings, NDOT shall follow the procedures in 36 CFR Part 800; and

WHEREAS, FHWA and NDOT have notified any federally recognized Indian tribes (Appendix B) (Tribes) that attach religious and cultural significance to historic properties that may be affected by an undertaking in Nebraska about this Agreement, has requested their comments, and has taken any comments received into account; and

WHEREAS, this Agreement shall replace the 2015 Programmatic Agreement Among The Federal Highway Administration, The Nebraska State Historic Preservation Officer, The Advisory Council on Historic Preservation And The Nebraska Department of Roads to Satisfy the Requirements of Section 106 for the Federal-aid Highway Program In the State of Nebraska, as amended (2020, 2021); and

WHEREAS, FHWA, SHPO, ACHP and NDOT are collectively referred to herein as the “signatories” or individually as “signatory”; and

NOW, THEREFORE, FHWA, SHPO, ACHP, and NDOT agree that the FAHP in Nebraska shall be carried out in accordance with the following stipulations in order to take into account the effects of the FAHP on historic properties in Nebraska and that these stipulations shall govern compliance of the FAHP with Section 106 of the NHPA until this Agreement expires or is terminated.

STIPULATIONS

FHWA and NDOT shall ensure that the following measures are carried out:

To aid the signatories of this Agreement, the stipulations are organized in the following order:

- I. Applicability and Scope
- II. Definitions
- III. Professional Qualification Standards
- IV. Rights and Responsibilities
- V. Consultation with Tribes
- VI. Participation of Other Consulting Parties and the Public
- VII. Project Review
- VIII. The Section 106 Process
- IX. Emergency Situations
- X. Post-Review Discoveries
- XI. Treatment of Human Remains
- XII. Administrative Stipulations

I. APPLICABILITY AND SCOPE

A. This Agreement shall apply to all FAHP NDOT-administered projects in Nebraska and sets forth the process that will be met to ensure compliance under Section 106.

1. For Projects Not Assigned to NDOT, FHWA is the lead Federal agency;

2. For Projects Assigned to NDOT, NDOT is deemed to be the lead Federal agency.

B. FHWA and NDOT establish through this agreement three tiers of project review, dependent upon the type of effects to historic properties.

1. Tier I Project Review: Tier I projects are defined as having no potential to affect historic properties as defined under 36 CFR §800.3(a)(1) and must meet the criteria outlined in Stipulation VII.A.

2. Tier II Project Review: Tier II projects are defined as having the potential to affect historic properties but following screening by the NDOT Professionally Qualified Staff (NDOT PQS, defined below) will be determined not to require case-by-case review by, or consultation with SHPO. NDOT will support and document a finding of *no historic properties affected*.

3. Tier III Project Review: Tier III projects are defined as actions that result in an effects determination of *no adverse effect* or *adverse effect* and require consultation with SHPO.

C. Cooperating Federal agencies as defined in 40 CFR §1508.5 who recognize the lead Federal agency for an undertaking subject to this agreement may fulfill their obligations under Section 106 of NHPA according to 36 CFR §800.2(a)(2) provided that the lead Federal agency follows the requirements of this Agreement and the cooperating agency's undertaking does not have the potential to cause effects to historic properties beyond those considered by the lead Federal agency under this Agreement.

1. All consultation with an agency regarding lead Federal agency status and compliance with Section 106 will be documented.

D. In the event that another federal agency not initially a party to or subject to this Agreement receives an application for funding/license/permit for an undertaking subject to this Agreement, that agency may fulfill its Section 106 responsibilities by stating in writing it concurs with the terms of this Agreement and notifying FHWA, NDOT, SHPO, and ACHP that it intends to do so, and adherence to the terms of this Agreement.

II. DEFINITIONS

A. Unless otherwise specifically defined herein, the definitions provided in 36 CFR §800.2 and 36 CFR §800.16 shall apply to this Agreement.

III. PROFESSIONAL QUALIFICATION STANDARDS

A. All actions prescribed by this Agreement that involve the identification, evaluation, analysis, recording, treatment, monitoring, or disposition of historic properties, or that involve the reporting or documentation of such actions in the form of reports, forms, or other records, shall be carried out by or under the direct supervision of a person or persons who meets the Secretary of the Interior's Professional Qualifications Standards (36 CFR Part 61). However, nothing in this stipulation may be interpreted to preclude FHWA or NDOT or any agent or contractor thereof from using the services of persons who do not meet these qualifications standards, providing their activities are conducted under the direct supervision of a person who does meet the standards.

B. NDOT shall employ a minimum of one (1) person trained, experienced, and qualified in one or more of the fields of archeology, history, architectural history and historic architecture (as defined in 36 CFR Part 61). They are designated as professionally qualified staff (PQS).

C. All Section 106 determinations will be performed by either a NDOT PQS or performed by a NDOT consultant who meets the Secretary of the Interior's Professional Qualifications Standards. All NDOT consultant Section 106 actions shall be reviewed and approved by a NDOT PQS.

IV. RIGHTS AND RESPONSIBILITIES

The following section identifies the responsibilities of FHWA, NDOT, ACHP and SHPO in complying with the terms of this Agreement.

A. FHWA Rights and Responsibilities

1. FHWA retains the responsibility for government to government consultation with federally recognized Tribes as defined in 36 CFR §800.16(m), whether or not NDOT has been identified as the lead Federal agency. NDOT may assist FHWA in consultation provided the individual tribes agree to alternate procedures.

2. For all other Projects and project activities not assigned, FHWA shall:

a) Remain legally responsible for ensuring that the terms of this Agreement are carried out and for all project findings and determinations

made pursuant to this Agreement and as defined in 36 CFR §800.2(a) and §800.2(c)(4).

b) Submit notice of adverse effects to ACHP, SHPO, and consulting parties.

3. FHWA may audit, monitor, or take other actions to ensure NDOT is adequately complying with 36 CFR Part 800 and the provisions of this Agreement.

B. NDOT Rights and Responsibilities

1. For Projects Assigned, NDOT shall remain legally responsible for ensuring that the terms of this Agreement are carried out and for all findings and determinations made pursuant to this Agreement and as defined in 36 CFR §800.2(a) and §800.2(c)(4).

2. For all Projects, NDOT shall:

a) Submit through file sharing to the SHPO and FHWA copies of all fieldwork reports, site forms, Reconnaissance Level Survey forms and any other relevant documents.

b) Submit a quarterly list (by standard calendar) of projects for which Section 106 has been completed that quarter to SHPO and FHWA.

c) Ensure curation of archeological materials recovered under this Agreement at a facility meeting the standards of 36 CFR Part 79.

3. For all Projects, NDOT PQS shall:

a) Ensure that the requirements for documentation are met in accordance with 36 CFR §800.11(d) and the most current NDOT Section 106 Guidelines.

b) Determine whether the proposed federal action is an undertaking as defined in 36 CFR §800.16(y).

c) Determine under 36 CFR §800.3(a)(1) whether the undertaking is a type of activity that has the potential to cause effects on historic properties.

d) Determine under 36 CFR §800.3(c) and (d) whether the undertaking may occur on or has the potential to affect historic properties on tribal lands as they are defined in 36 CFR §800.16(x).

e) Solicit public comment and involvement, in accordance with 36 CFR §800.3(e) and NDOT's most current and FHWA-approved Public Involvement Procedures.

- f) Identify, as appropriate, any consulting parties, as described in 36 CFR §800.2, and invite them to participate in the undertaking as described in 36 CFR §800.3 and covered by this Agreement.
- g) Determine and document the scope of identification efforts and level of effort, as described in 36 CFR §800.4 (a) and (b), including the undertaking's APE.
- h) Determine and document boundaries for historic properties as defined by National Register Bulletins and as detailed in the current NDOT Section 106 Guidelines.
- i) In consultation with any Tribes that might attach religious and cultural significance to properties within the APE per 36 CFR §800.4(c)(1), determine and document the NRHP eligibility of properties within the APE.
- j) Determine and document whether historic properties may be affected by the undertaking.
- k) Assess effects by applying the criteria of adverse effects as described in 36 CFR §800.5(a) (1) and document the finding of effects.
- l) For Projects Assigned, submit notice of adverse effects to ACHP, SHPO, and consulting parties.
- m) For Projects Assigned, consult with SHPO and ACHP (if ACHP has chosen to participate) to resolve adverse effects through the development and execution of a Memorandum of Agreement (MOA) or a Programmatic Agreement (PA), if appropriate.
- n) For Projects Not Assigned, provide the recommendation of effects and associated documentation to FHWA for no adverse effect and adverse effect findings.
- o) For Projects Not Assigned, provide sufficient information to FHWA for their use in consultation with SHPO and with ACHP (if the effect is adverse and ACHP has chosen to participate) to resolve adverse effects through the development and execution of a Memorandum of Agreement (MOA) or Programmatic Agreement (PA), if appropriate.

C. ACHP Rights and Responsibilities

1. The ACHP will be notified of findings of adverse effect by the applicable lead Federal agency and will be invited to participate in resolving

the adverse effect of an undertaking in accordance with 36 CFR 800.6(a)(1).

2. The ACHP will participate in accordance with Stipulation XII.C in the resolution of disputes that may occur through the implementation of this Agreement.

D. SHPO Rights and Responsibilities

1. SHPO shall be responsible for responding to FHWA and NDOT requests according to the terms of this Agreement; and

2. Shall participate in site visits and meetings to discuss large or complex undertakings upon request by FHWA or NDOT as staff time and resources permit.

V. CONSULTATION WITH TRIBES

A. FHWA shall retain responsibility for complying with all federal requirements pertaining to government-to-government consultation with Tribes. Notwithstanding any other provision of this stipulation, FHWA shall honor the request of any Tribe for government-to-government consultation regarding an undertaking covered by this Agreement.

B. NDOT shall make a reasonable and good faith effort to identify any Tribes that might attach religious and cultural significance to historic properties in the area of potential effects (APE) in accordance with 36 CFR §800.3(f)(2).

1. For Projects Not Assigned, NDOT shall convey identified tribes to FHWA who then, at their discretion, shall invite Tribes to participate as a consulting party under 36 CFR §800.2(c).

a) NDOT shall compile and submit Section 106 documentation to FHWA for review and approval. This documentation shall be prepared in accordance with 36 CFR §800.11 and the NDOT Section 106 Guidance.

b) FHWA shall initiate and complete consultation with Tribes in accordance with 36 CFR Part 800, except where separate agreements have been executed with Tribes.

c) FHWA shall provide NDOT record of all tribal consultation efforts for NDOT to complete project documentation.

2. For Tier II and Tier III Projects Assigned, NDOT shall invite Tribes to participate as a consulting party under 36 CFR §800.2(c). NDOT shall initiate and complete consultation with Tribes in accordance with 36 CFR

Part 800, except where separate agreements have been executed with Tribes.

a) If the State adequately resolves any project-specific Indian tribe issues or concerns, then FHWA's role in the Section 106 process shall be limited to carrying out the government-to-government consultation process. FHWA shall enter into government-to-government consultation with any Indian tribe who contacts FHWA or NDOT (via written or oral communication) to make such a request. The parties shall notify each other of any government-to-government requests received.

b) If FHWA determines through consultation with an Indian tribe, or an Indian tribe indicates to FHWA, that the proposed resolution of tribal issues or concerns by the State is not adequate, then FHWA may reassume responsibility for processing the project or an individual responsibility assumed by the State per the 326 MOU. The FHWA shall notify the State that the project will be excluded.

C. NDOT shall maintain records of all tribal consultation efforts in a manner consistent with NDOT's current guidance documents.

D. Alternate Procedures: If Tribes express interest, FHWA and NDOT will work to develop alternate procedures acceptable to and agreed upon by the Tribe(s), FHWA, and NDOT regarding respective consultation responsibilities.

VI. PARTICIPATION OF OTHER CONSULTING PARTIES AND THE PUBLIC

A. Consulting parties shall be identified pursuant to, and their participation in undertakings covered under this Agreement shall be governed by 36 CFR §800.2(c) and §800.3(f). Other individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties. Other parties entitled to be consulting parties shall be invited to participate in the Section 106 process. Any land-managing agency whose land may be affected by an undertaking shall be invited to participate in the Section 106 process.

B. Any local governments (including Certified Local Governments (CLGs)) or applicants that are entitled to be consulting parties under 36 CFR §800.2(c) shall be

invited to participate. All written requests of individuals and organizations to participate as consulting parties shall be considered.

C. For Tier II and Tier III projects, NDOT shall identify consulting parties as described above.

1. Regardless of Assignment, NDOT shall complete consultation for those projects which result in a project effect finding of *no historic properties affected*.

2. For Projects Not Assigned FHWA shall complete consultation for those projects which result in a project effect finding of *no adverse effect* or *adverse effect*. NDOT shall coordinate with FHWA regarding identification of consulting parties and shall compile and submit Section 106 documentation to FHWA for review and approval. This documentation shall be prepared in accordance with 36 CFR §800.11.

D. Public Involvement

1. Section 800.2(d) states that the views of the Public are essential to informed Federal decision making in the Section 106 process. Public involvement in planning and implementing undertakings covered by this Agreement shall be governed by the FHWA-approved NDOT Public Involvement Procedures. Public involvement and the release of information hereunder shall be consistent with 36 CFR §800.2(d) (1-2), §800.3(e), and §800.11(c) (1 and 3) as well as public involvement regulations in 23 CFR §771.111 and 23 CFR Part 450, and the FHWA-approved NDOT Public Involvement Procedures.

VII. PROJECT REVIEW

All undertakings reviewed under this Agreement shall utilize the following "Tier" review system:

A. Tier I Project Review

Pursuant to 36 CFR §800.3(a)(1), if the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present, then that undertaking will be processed as a Tier I project. This undertaking will not require further review under Section 106. Tier I projects must correspond to the conditions and meet the actions identified in Appendix C. Tier I projects are processed by the NDOT PQS.

B. Tier II Project Review

1. Tier II undertakings are those determined by the NDOT PQS to have the potential to affect historic properties but that upon review, result in a project effects determination of *no historic properties affected*.

2. Tier II undertakings shall not require case-by-case review by SHPO prior to NDOT determining that all Section 106 requirements have been satisfied.

3. Two categories of Tier II projects have been established under this Agreement:

a) Tier II – No Cultural Resource Investigations

(1) The signatories to this Agreement agree that certain undertakings have minimal potential to cause effects on historic properties. Such undertaking types are listed in Appendix D “Tier II – Undertakings with Minimal Potential to Cause Effects”.

(2) Undertakings with activity types listed in Appendix D shall be reviewed and documented by the NDOT PQS but following documentation, will be determined to require no further review or consultation under this Agreement.

b) Tier II – Cultural Resource Investigations

(1) After NDOT PQS review, these are undertakings which have potential to affect historic properties, and which contain activities that are not listed in Appendix D and which result in a project effects determination of no historic properties affected.

(2) If the NDOT PQS determines that there are: (1) no historic properties present; (2) unevaluated archeological sites; or (3) historic properties present within the APE, but the undertaking will have no effect on them as defined in 36 CFR §800.16(i), NDOT shall make and document a finding of *no historic properties affected* (36 CFR §800.4(d)(1)).

C. Tier III Project Review

Tier III projects are all undertakings that result in a finding of *no adverse effect* or *adverse effect*. The Section 106 process shall be completed as described in Stipulation VIII of this Agreement.

VIII. THE SECTION 106 PROCESS

For Projects Assigned, NDOT performs the duties outlined below and assumes authority and responsibility for all actions, findings, and determinations. For Projects Not Assigned, NDOT performs the duties below in consultation with FHWA who assumes authority and responsibility for all actions, findings, and determinations.

For all undertakings reviewed in pursuant to this Agreement, the following process shall be implemented:

A. NDOT shall establish the undertaking and determine if the undertaking is a type of activity that has the potential to cause effects on historic properties and whether the undertaking occurs on Tribal or Federal lands.

1. If NDOT determines that the undertaking is one with no potential to cause effects (Tier I), NDOT will document this decision using the NDOT PQS Tier I form (Appendix C). Section 106 is complete.

2. If NDOT determines that the undertaking has minimal potential to cause effects on historic properties and the activity type(s) conform with Appendix D, no cultural resource investigations will be conducted.

a) NDOT shall involve the public, Tribes and other consulting parties in a manner that is consistent with 36 CFR §800.2, 800.3(e) and 800.3(f) and is also in compliance with the FHWA-approved Public Involvement Procedures and associated documentation requirements.

(1) For Projects Not Assigned, NDOT shall provide notification and documentation to FHWA, identifying consulting parties, including tribal consulting parties and outlining an intent to make a *no historic properties affected* determination prior to notifying consulting parties as described in C.1.b of such an intent. FHWA will notify NDOT of any objections within 15 business days of receipt of this notification.

b) A project effects determination of *no historic properties affected* will be documented on the "NDOT Tier II PQS Memo, Undertakings with Minimal Potential to Cause Effects form (Attachment A).

3. If NDOT determines that the project does not meet the considerations of VIII.A.1 or VIII.A.2 above, NDOT shall continue the Section 106 process as described below.

B. Identification and Evaluation of Historic Properties

1. Pursuant to 36 CFR §800.4(a), NDOT shall determine the scope of identification efforts, including determining and documenting the undertaking's area of potential effects (APE), as defined at 36 CFR

§800.16(d). The APE will be defined according to procedures outlined in the current NDOT Section 106 Guidelines. The SHPO agrees that NDOT shall define the APE but need not conduct consultation on the definition of the APE if following the process outlined in the NDOT Section 106 Guidelines. If unusual circumstances arise, NDOT may coordinate with the SHPO in defining the APE.

a) If NDOT initiates consultation with the SHPO on the scope of the identification efforts and the definition of the APE, SHPO shall have 15 calendar days to comment. If SHPO does not respond within that time period, NDOT may assume that SHPO has no objections and may proceed to the next step in the Section 106 process.

b) For Projects Not Assigned, NDOT shall provide information to FHWA regarding NDOT's recommendation regarding definition of the APE and the level of effort for the identification and evaluation of historic properties for review and comment. Upon review, FHWA may request SHPO review.

2. NDOT shall involve the public, Tribes and other consulting parties in a manner that is consistent with 36 CFR §800.2, 800.3(e) and 800.3(f) and is also in compliance with the FHWA-approved Public Involvement Procedures and associated documentation requirements.

3. Pursuant to 36 CFR §800.4(b), NDOT shall ensure the identification of cultural resources that may exist within the APE and gather information to evaluate the integrity and eligibility of these properties for listing in the NRHP.

4. NDOT's identification and evaluation of historic properties shall follow the Secretary of the Interior's Standards and Guidelines for Identification (48 FR 44720-23), and will be consistent with guidance issued by SHPO, FHWA, NDOT, and any other guidance, methodologies, agreements, or protocols that FHWA, NDOT, and SHPO agree should be used to identify properties, including those of other land-managing agencies.

5. NDOT shall evaluate the historic significance of identified properties in the APE in accordance with 36 CFR §800.4(c) and shall make determinations regarding eligibility. The NDOT PQS will identify boundaries, following standards set forth in National Register Bulletin 21, Defining Boundaries for National Register Properties. NDOT may consult with SHPO on the outcome of identification and evaluation of historic resources, if necessary.

6. Pursuant to 36 CFR § 800.3(g), the lead Federal agency may request SHPO review a consultation that addresses multiple steps in §§ 800.3 through 800.6 on findings of inventory, determinations of eligibility, and finding of effect, provided NDOT and the SHPO agree it is appropriate and other consulting parties and the public are afforded an adequate opportunity to express their views pursuant to 36 CFR §800.2(d).

a) If SHPO fails to comment on any findings contained in a lead Federal agency consultation submission within 15 calendar days of receipt, the lead Federal agency may assume they have no objection and proceed to the next step in the consultation process pursuant to 36 CFR §800.3(c)(4).

7. Agreements regarding the NRHP eligibility of properties evaluated hereunder, and any disagreements pertaining thereto, shall be governed by 36 CFR §800.4(c)(2). In the event of a disagreement, the lead Federal agency shall first consult with the disagreeing party to resolve the disagreement.

a) If the disagreement cannot be resolved through additional consultation, the lead Federal agency shall notify SHPO, whereupon the lead Federal agency, SHPO, and any consulting party shall consult to resolve the disagreement in accordance with a time frame specified by the lead Federal agency.

b) If the disagreement is not resolved, the lead Federal agency shall refer the issue to the Keeper of the National Register of Historic Places to obtain a determination of eligibility. A formal determination of eligibility from the Keeper is final.

C. Finding of Effect

1. No Historic Properties Affected

a) If NDOT determines that either there are no historic properties present or there are historic properties present within the APE, but the undertaking will have no effect on them as defined in 36 CFR §800.16(i), NDOT shall make and document a finding of *no historic properties affected* (36 CFR §800.4(d)(1)). This decision shall be documented using the NDOT Tier II PQS Memo - No Historic Properties Affected form (Attachment A).

b) NDOT shall notify all consulting parties by letter of the findings it makes for individual Tier II projects, consistent with the confidentiality provisions of 36 CFR §800.11(c), prior to approving the undertaking.

c) For Projects Not Assigned, NDOT shall provide notification and documentation to FHWA, outlining their intent to make a *no historic properties affected* determination prior to notifying consulting parties as described in C.1.b, above. FHWA will notify NDOT of any objections within 15 business days of receipt of notification.

(1) In accordance with 36 CFR §800.4(c), on behalf of FHWA, NDOT shall complete consultation with consulting parties, including THPO, regarding NRHP eligibility and shall notify consulting parties by letter of FHWA's intent to make a *no historic properties affected* determination.

2. No Adverse Effect

a) The lead Federal agency shall recommend a finding of *no adverse effect* if none of the undertaking's anticipated effects meet the criteria of adverse effect under 36 CFR §800.5(a)(1), or if the lead Federal agency modifies the undertaking or imposes conditions that will avoid adverse effects to historic properties.

b) The lead Federal agency shall submit its eligibility determination, finding of effect and supporting documentation to all consulting parties for comment and will request SHPO concurrence on the finding.

(1) Where FHWA is the lead Federal agency, NDOT shall submit eligibility recommendations, recommendation of effects, and supporting documentation, including the documentation specified in 36 CFR §800.11(e), to FHWA for review and approval. FHWA will complete the finding of effect and all consultation.

c) The lead Federal agency may consult at any time, either formally or informally, with SHPO regarding application of the Criteria of Adverse Effect.

d) If SHPO, or another consulting party, objects within 30 days of receipt of a finding of *no adverse effect*, the lead Federal agency will either consult to resolve the objection or request ACHP to review the finding pursuant to 36 CFR §800.5(c)(2).

e) The lead Federal agency shall maintain a record of the finding and provide information on the finding to all consulting parties and the public on request, consistent with the confidentiality provisions of 36 CFR §800.11(c) and Stipulation XII.G of this Agreement.

f) NDOT shall document these decisions using the NDOT Tier III PQS Memo, No Adverse Effect form (Attachment A).

3. Adverse Effect

a) Where the lead Federal agency determines an *adverse effect*, as defined by the criteria of adverse effect set forth in 36 CFR §800.5(a)(1), cannot be avoided, the lead Federal agency shall make and document a finding of *adverse effect*.

(1) Where FHWA is the lead Federal agency and when there is an *adverse effect*, as defined by the Criteria of Adverse Effect set forth in 36 CFR §800.5(a) that cannot be avoided, NDOT shall recommend and document a finding of *adverse effect* for review by FHWA.

b) Prior to any finding of adverse effect, the lead Federal agency may consult either formally or informally with SHPO regarding application of the criteria of adverse effect.

4. Resolution of Adverse Effect

a) When a finding of *adverse effect* has been made, the lead Federal agency shall, in consultation with SHPO/THPO and other consulting parties, evaluate alternatives or modifications to the project that would avoid, minimize, or mitigate adverse effects on historic properties. The lead Federal agency shall propose measures to resolve adverse effects, to be documented in a Memorandum of Agreement (MOA) or Programmatic Agreement (PA).

b) The lead Federal agency shall make information available to the public, including the documentation specified in 36 CFR §800.11(e), subject to the confidentiality provisions of 36 CFR §800.11(c) and Stipulation XII.G.

c) The lead Federal agency shall provide an opportunity for members of the public to express their views on resolving adverse effects of the project through NDOT's most current, FHWA-approved Public Involvement Procedures. FHWA, NDOT PQS and SHPO shall be invited to any public meeting. NDOT shall document the views of the public and shall provide copy to SHPO and to FHWA where FHWA is the lead Federal agency.

d) For locally administered projects, the lead Federal agency shall coordinate with the Project Proponent and the NDOT Public Involvement Coordinator to develop appropriate public outreach. NDOT shall provide an opportunity for members of the public to express their views on resolving adverse effects of the project. FHWA, NDOT PQS, and SHPO shall be invited to any public meeting. NDOT shall document the views of

the public and shall provide a copy to SHPO and to FHWA where FHWA is the lead Federal agency.

e) The lead Federal agency shall notify ACHP of the finding, pursuant to 36 CFR §800.6(a)(1). The lead Federal agency shall indicate intent to prepare a MOA or a PA and shall invite ACHP to participate in the undertaking and in the development of an agreement document to resolve adverse effects.

(1) ACHP shall advise the lead Federal agency and the consulting parties whether it will participate within 15 days of receipt of notice.

(a) The lead Federal agency will provide supporting documentation in accordance with 36 CFR §800.11(e).

(2) ACHP shall determine participation pursuant to 36 CFR §800.6(a)(1).

f) After consideration of the views of all consulting parties and the public, if the lead Federal agency, SHPO and ACHP (if it has chosen to participate pursuant to 36 CFR Part 800 Appendix A) agree on how the adverse effects will be resolved, they shall execute an MOA, pursuant to 36 CFR §800.6(c), or a PA pursuant to 36 CFR §800.14(b).

g) A copy of the MOA or the PA shall be provided to each signatory, invited signatory, and concurring parties. If not a signatory, a copy of the MOA or the PA will be provided to the ACHP and to FHWA.

h) Once finalized, the lead Federal agency shall incorporate the measures to resolve adverse effects into the undertaking, and NDOT shall implement the undertaking.

i) If the lead Federal agency determines that an undertaking may adversely affect a National Historic Landmark, the lead Federal agency shall request SHPO, ACHP, and the Secretary of the Interior, as well as any other consulting parties, to participate in consultation to resolve any adverse effects, pursuant to 36 CFR 800.10.

j) NDOT shall document these decisions using the NDOT Tier III PQS Memo, Adverse Effect form (Attachment A).

D. Supplemental Evaluations

When a project scope is revised (e.g., design changes, utility relocation, addition of new ROW) the NDOT PQS will determine whether the changes require modifying the APE or may result in a revision to the original project effect finding. In determining

whether further review is required under Section 106, the NDOT PQS will consider the level of effort and the age of the survey and will follow the steps presented below.

1. Regardless of whether assigned or unassigned, if the scope changes do not require modifying the APE and the finding of effect remains the same, then no further consultation will be required. The NDOT PQS will document this finding to the project file, either through an email memo or a Section 106 Supplemental PQS memo.

2. If the scope change has the potential to alter the finding of effect for an undertaking, then NDOT will evaluate this change and will follow the process in Stipulation VIII, as applicable. Consultation efforts will be commensurate with the nature and scope of the changed potential effects. The NDOT PQS will document this finding and consultation efforts to the project file, through a Section 106 Supplemental PQS memo.

3. If the scope changes do require modifying the APE, the NDOT PQS will determine whether a new survey is warranted, as follows:

a) When the expanded APE has not been previously surveyed, the NDOT PQS will arrange for a survey to be conducted following procedures outlined in the current NDOT Section 106 Guidelines.

b) When the expanded APE has been previously surveyed with no historic properties identified, the NDOT PQS will document this finding to the project file, either through an email memo or a Section 106 Supplemental Evaluation PQS memo. No further consultation will be required.

c) If the expanded APE has not been previously surveyed but after professional evaluation, the NDOT PQS determines that survey of the area within the expanded APE is unwarranted (i.e., location is in existing fill or in a cut section, the area is in a topographic location that is unlikely to contain significant, intact archeological resources and/or there are no architectural or structural resources) the NDOT PQS will document this finding and the reason(s) survey is unwarranted to the project file, either through an email memo or a Section 106 Supplemental Evaluation PQS memo. No further consultation will be required for assigned projects. For unassigned, NDOT shall provide notification, resulting documentation and recommended determination to FHWA. FHWA will notify NDOT of any objections within 15 business days of receipt of notification.

4. If the scope changes do require expanding the APE and the NDOT PQS determines a new or updated survey is required, depending on the survey results, NDOT will proceed as follows:

a) When no additional historic properties are identified within the modified APE and the revised scope will not alter the finding of effect for the undertaking, then the NDOT PQS will document this finding using a Section 106 Supplemental Evaluation PQS memo. No further consultation will be required.

(1) If the additional survey was conducted on lands managed by a federal agency consultation will follow Stipulation V and VI, as applicable.

b) When additional historic properties are identified within the expanded APE, but the finding of effect for the undertaking is unchanged, the NDOT PQS will document this finding using a Section 106 Supplemental Evaluation PQS memo and will follow the review and consultation process in Stipulations V through VIII, as applicable. Consultation efforts will be commensurate with the nature and scope of the change and will take into account information received from consulting parties during previous consultation efforts. For unassigned projects, NDOT shall provide notification, resulting documentation and recommended determination to FHWA. FHWA will notify NDOT of any objections within 15 business days of receipt of notification.

c) When additional historic properties are identified within the expanded APE, and as a result, the finding of effect for the undertaking may be altered, the NDOT PQS will document this finding using a Section 106 Supplemental Evaluation PQS memo and will follow the review and consultation process in Stipulations V through VIII, as applicable. Consultation efforts will be commensurate with the nature and scope of the change and will take into account information received from consulting parties during previous consultation efforts.

E. Project Reporting

1. Upon request from any signatory to this agreement, NDOT shall furnish project information in the format and on the schedule requested.

2. NDOT PQS shall compile and submit a list of all projects to FHWA and SHPO quarterly.

3. NDOT shall ensure that this list includes the county, project name and number, type of Tier, effect determination, level of effort (i.e. desktop review, field survey), consultation measures, and description of any NRHP listed, eligible, or newly recommended eligible properties identified during Section 106 evaluations.

4. NDOT shall also provide availability of all cultural resource reports, site forms, and other documentation for undertakings completed during the quarter to SHPO and FHWA continuously through file sharing.

IX. NDOT EMERGENCY SITUATIONS

Pursuant to 36 CFR § 800.12(d), immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of Section 106. The following provisions provide procedures for emergency undertakings as authorized by 36 CFR § 800.12(b)(1) and only apply to undertakings that will be implemented within 30 days after the disaster or emergency has been formally declared by the appropriate authority or later if ACHP grants an extension of the 30-day deadline as allowed per 36 CFR § 800.12(d).

The below stipulations relate only to the procedures for review, analysis, and consultation required under Section 106 whereas procedures for obtaining Emergency Relief funding from FHWA's Emergency Relief Program are defined and controlled by other applicable laws, regulations, policies, and procedures. Any actions taken with federal funds must comply with applicable federal law for that funding or program. Unless otherwise permitted by law or specifically stated in this section, nothing in this agreement will be interpreted to permit stand-alone permanent repairs, or activities that are not immediate rescue and salvage operations conducted to preserve life or property, without first completing the Section 106 process.

1. Activities that remain entirely within the roadway/trail cross-sections and fill locations that existed prior to the emergency event are considered undertakings with minimal potential to cause effect and will result in an effect determination of *no historic properties affected*. These activities shall be processed in accordance with Stipulation VIII.A(2) of this agreement, prior to the commencement of the undertaking.
2. For activities that occur outside the roadway/trail cross-sections and fill locations that existed prior to the event, NDOT shall either:
 - a) Provide notice of the emergency action through electronic mail (when appropriate) or documented phone call to SHPO/THPO/Tribes and FHWA at least 10 calendar days prior to the start of repairs.
 - (1) The notice shall: 1) be clearly and prominently marked as an emergency notification; 2) briefly disclose the nature of the damage and the immediate repairs; 3) offer the opportunity to provide immediate input; 4) provide notice that due to the nature of the emergency, the work to stabilize/protect the site or restore essential traffic will begin immediately.

(2) SHPO shall reply within 5 calendar days if they object to the commencement of repair. Repairs shall not begin until SHPO objections are resolved.

b) Alternately, NDOT will complete the Section 106 process for these undertakings, following Stipulations VIII through X of this agreement.

B. All other projects will comply with the procedures in Stipulations VIII through X of this Agreement. In these situations, the lead federal agency may request an expedited review by SHPO and consulting parties. Tribal consultation shall proceed pursuant to 36 CFR §800.12 or according to any alternate procedures agreed upon by the Tribe(s).

X. POST-REVIEW DISCOVERIES

NDOT shall ensure that the NDOT Standard Specification 107.10, Archeological and Paleontological Discoveries (Attachment B) applies to all Federal-aid projects unless project specific measures are developed and agreed upon through the consultation process.

A. Planning for Subsequent Discoveries

1. When NDOT's identification efforts in accordance with Stipulation VIII.B and most current NDOT Section 106 Guidelines indicate that historic properties are likely to be discovered during implementation of an undertaking, NDOT shall include in any environmental document a plan for discovery of such properties. Implementation of the plan as originally proposed or modified as necessary owing to the nature and extent of the properties discovered, will be in accordance with 36 CFR §800.4-6.

B. Discoveries Made Prior to Project Construction

1. If previously unidentified archeological or historic properties or unanticipated effects are discovered after the lead Federal agency has completed its review under this Agreement and prior to commencement of project construction, the lead Federal agency, in consultation with SHPO, shall carry out the applicable requirements of this Agreement. Specifically, the lead Federal agency shall make project effect determinations as stipulated under this Agreement.

C. Discoveries Made After Project Construction Begins

1. If previously unidentified historic properties, or unanticipated effects, are discovered after project construction begins, that portion of the project will stop immediately, in accordance with NDOT Standard Specification 107.10 (Attachment B).

2. The NDOT Construction Project Manager will immediately contact the NDOT Technical Resources Unit Program Manager. The NDOT Technical Resources Unit Program Manager will notify FHWA within 24 hours of the discovery.
3. No further work in the area of discovery will proceed until the lead Federal agency determines that the requirements of 36 CFR §800.13 have been satisfied, including consultation with Tribes as necessary (subject to Stipulation V) that may attach traditional religious and cultural significance to the discovered property.
4. NDOT will notify FHWA of the discovery, the recommended project effect determination and outline next steps. Unless FHWA objects, NDOT will notify SHPO, the tribe(s), and other consulting parties as appropriate within forty-eight (48) hours. The unanticipated discovery shall be processed pursuant to this Agreement.
5. If the project's effect is determined to be adverse, NDOT shall design a plan for avoiding, minimizing, or mitigating adverse effects on the eligible property. The lead Federal agency shall consult with SHPO, ACHP and Tribes as a Tier III project under this Agreement.
6. If SHPO or the tribe(s) does/do not file an objection within 48 hours to NDOT's plan for addressing the discovery, the lead Federal agency may carry out the requirements of 36 CFR §800.13 and the ACHP does not need to be notified.
7. NDOT shall provide FHWA, SHPO and the tribe(s) a report of the actions when they are completed.

XI. TREATMENT OF HUMAN REMAINS

If human remains are discovered during construction, depending on land ownership, Native American remains and any funerary objects, sacred objects, or objects of cultural patrimony (cultural objects) found on federal or tribal land within the APE shall be treated pursuant to the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 (25 USC 3001 et seq. and its implementing regulations (43 CFR Part 10, as amended)) or the Nebraska Unmarked Human Burial Sites and Skeletal Remains Protection Act of 1989 if remains are found on non-federal or non-tribal land.

- A. If human remains are encountered during construction, all construction would cease at the location in accordance with NDOT Standard Specification 107.10 (Attachment B).
- B. The location would be secured and protected from damage and disturbance by the NDOT Highway Project Manager. No human remains or materials associated with

the remains will be collected or removed until appropriate consultation has taken place and a plan of action has been developed.

C. The NDOT Highway Project Manager shall immediately notify the local law enforcement (county sheriff/county coroner) and the NDOT Technical Resources Unit Program Manager.

D. The NDOT Technical Resources Unit Program Manager shall notify FHWA within 24 hours of the discovery.

E. No further work in the area of discovery will proceed until the FHWA determines that the requirements of 36 CFR 800.13 have been satisfied.

F. If law enforcement determines that a crime is not involved, History Nebraska staff will be contacted by the appropriate county attorney's office. History Nebraska staff shall promptly assist in examining the discovered material to attempt to determine its origin and identity pursuant to Nebraska Revised Statute 12-1203. History Nebraska staff is required to conduct an onsite investigation within 48 hours to make a preliminary determination of the origin and identity of the remains and promptly relate the findings in writing to the county attorney and interested parties, who may include: a descendant Indian Tribe, a descendant family, or the Nebraska Commission on Indian Affairs (NCIA). This initial contact often outlines the need for further examination of the remains by a qualified physical anthropologist to assist with cultural affiliation determination.

G. If the human remains are determined to be non-Native American, consultation with SHPO, FHWA, NDOT, the State Archaeologist, and other appropriate parties will be required to determine a plan of action.

XII. ADMINISTRATIVE STIPULATIONS

A. Documentation

1. All documentation that NDOT develops to support findings and determinations made under this Agreement shall be consistent with 36 CFR §800.11 and shall be in accordance with the NDOT Section 106 Guidelines, and its subsequent revisions or editions, as appendices to this Agreement, and with applicable guidelines and procedures of land-managing agencies that have jurisdiction over the land involved in the undertaking.

2. Documentation prepared by local agencies or their consultants in support of such findings shall be submitted to NDOT for review and approval by the NDOT PQS. NDOT shall transmit all documentation cited herein to SHPO as stipulated by this Agreement. NDOT shall not transmit to FHWA or SHPO any documentation that has not been reviewed and approved by the NDOT PQS.

3. All documentation prepared in support of this Agreement shall be kept on file at NDOT and made available to consulting parties and the public as stipulated by the Agreement consistent with applicable confidentiality requirements as described in 36 CFR §800.11(c) and pursuant to Stipulation XII.G.

4. For all projects, upon NDOT PQS approval, reports and forms will be submitted by NDOT continuously through file sharing in accordance with Stipulation VIII.E including copies of fieldwork reports, site forms, Reconnaissance Level Survey forms and any other relevant documents.

B. Monitoring/Reporting

1. FHWA, SHPO, and ACHP may review activities carried out pursuant to this Agreement. NDOT shall facilitate this review by compiling specific categories of information to document the effectiveness of the Agreement and by making this information available on an annual basis to FHWA, SHPO and ACHP in the form of a written report. The annual report shall include, but is not limited to, a narrative summarizing actions taken under the Agreement within the review period, including all findings and determinations, accomplishments, public objections, trainings, and inadvertent effects or foreclosures.

2. NDOT shall prepare the annual written report identified in Stipulation XII.B. NDOT shall submit the annual reports to FHWA, SHPO and ACHP no later than three (3) months following the end of the Federal fiscal year (September 30) after the execution of the agreement.

3. NDOT, FHWA, and SHPO will meet annually to evaluate the agencies' joint functioning under the Agreement, and to suggest revisions to its stipulations. NDOT shall coordinate and facilitate this meeting and it will be held within 60 days of issuance of the annual report. Prior to any such meetings, ACHP will be notified at least 30 days in advance, and may participate at its discretion.

4. Program Reviews will occur annually and will be initiated within three (3) months of the annual report being issued, unless the FHWA, NDOT, SHPO, and ACHP all agree in writing that a review that year would be unnecessary. If all parties agree that a review that year is not necessary, a review will be held the following year (not to surpass two (2) full years without a review). The focus of the review will be decided as part of the annual meeting, and can include project reviews, file reviews, and/or interviews, at the discretion of the signatory agencies. At a minimum, the reviews will be used to determine if the Agreement requirements are being met, decide if amendments to the Agreement are warranted, review the reporting format and categories for adequacy, and identify any other actions

that may be needed in order to take into account the effects of the FAHP on historic properties in Nebraska. The results of each review shall be summarized within a stand-alone Program Review report. This report shall be provided to all signatories.

5. NDOT shall provide notice to the public that the annual report herein prescribed is available for public inspection and ensure the public are made aware of its availability and that the public may comment to signatory parties on the report. Within 30 calendar days of issuance of the annual report, NDOT shall coordinate with FHWA, and in consultation with SHPO, will identify the specific recipients of the public notice and outreach methodology.

C. Resolving Objections to Implementation of this Agreement. Within this section, FHWA is the lead Federal agency for Program level objections, government-to-government consultation concerns, and objections for unassigned project-level actions. NDOT is the lead Federal agency for objections regarding assigned project-level actions.

1. If any signatory party determines that the agencies are not meeting its responsibilities under this Agreement, measures will be taken to resolve the concerns with the lead Federal agency. FHWA retains the authority to determine federal-aid eligibility for any project(s) which may have been processed in noncompliance of this Agreement and retains the authority to rescind this Agreement.

2. Should any signatory party object in writing to the FHWA regarding the manner in which the terms of this Agreement are carried out, FHWA will immediately notify the other signatory parties of the objection and proceed to consult with the objecting party to resolve the objection. FHWA will honor the request of any signatory party to participate in the consultation and will take any comments provided by such parties into account. The lead Federal agency shall establish a reasonable time frame for such consultations.

3. If the objection is resolved through consultation, the lead Federal agency may authorize the disputed action to proceed in accordance with the terms of such resolution.

4. If after initiating such consultation, the lead Federal agency determines that the objection cannot be resolved through consultation, the lead Federal agency shall forward all documentation relevant to the objection to ACHP and other signatory parties, including the lead Federal agency's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, ACHP shall exercise one of the following options:

- a) Advise the lead Federal agency that ACHP concurs in the lead Federal agency's proposed response to the objection, whereupon the lead Federal agency will respond to the objection accordingly; or
 - b) Provide the lead Federal agency with recommendations, which the lead Federal agency shall take into account in reaching a final decision regarding its response to the objection; or
 - c) Notify the lead Federal agency that the objection will be referred for comment pursuant to 36 CFR §800.7(a) (4) and proceed to refer the objection and comment. In this event, the lead Federal agency shall ensure that the Agency Official is prepared to take the resulting comments into account in accordance with 36 CFR §800.7(c)(4).
5. Should ACHP not exercise one of the foregoing options within 30 days after receipt of all pertinent documentation, the lead Federal agency may proceed with the proposed response to the objection.
6. The lead Federal agency shall take into account any ACHP recommendation or comment and any comments from the other signatory parties to this Agreement in reaching a final decision regarding the objection. The lead Federal agency responsibility to carry out all actions under this Agreement that are not the subject of the objection shall remain unchanged.
7. The lead Federal agency shall provide all other signatory parties to this Agreement with a written copy of its final decision regarding any objection addressed pursuant to this Stipulation.
8. The lead Federal agency may authorize any action subject to objection under this Stipulation to proceed, provided the objection has been resolved in accordance with the terms of this Stipulation.
9. At any time during implementation of the terms of this Agreement, should any member of the public raise an objection in writing pertaining to such implementation to any signatory party to this Agreement, that signatory party shall immediately notify the lead Federal agency. The lead Federal agency shall immediately notify the other signatory parties in writing of the objection. Any signatory party may choose to comment on the objection to the lead Federal agency. The lead Federal agency shall establish a reasonable time frame for this comment period. The lead Federal agency shall consider the objection, and in reaching its decision, will take all comments from the other signatory parties into account. Within 15 days following closure of the comment period, the lead Federal agency will render a decision regarding the objection and respond to the objecting party. The lead Federal agency will promptly notify the other signatory

parties of its decision in writing, including a copy of the response to the objecting party. The lead Federal agency's decision regarding resolution of the objection will be final. Following the issuance of its final decision, the lead Federal agency may authorize the action subject to dispute hereunder to proceed in accordance with the terms of that decision.

D. Amendment

Any signatory party to this Agreement may at any time propose amendments to the Agreement, whereupon all signatory parties shall consult to consider such amendment. This Agreement may be amended only upon written concurrence of all signatory parties. The amendment will be effective on the date a copy is signed by all the signatories.

E. Appendices and Attachments

1. This PA includes several appendices. Appendices were developed in coordination with the appropriate resource agencies.
2. Appendices to this Agreement may be individually amended through written agreement of the signatory parties without requiring amendment of the Agreement.
3. Attachments to this document may be altered or updated without amendment.

F. Termination

1. Any signatory party may terminate this Agreement. If this Agreement is not amended as provided for in Stipulation XIII.D, or if any signatory party proposes termination of this Agreement for other reasons, the party proposing termination shall notify the other signatory parties in writing, explain the reasons for proposing termination, and consult with the other parties for no more than 30 days to seek alternatives to termination.
2. Should such consultation fail, the signatory party proposing termination may terminate this Agreement by promptly notifying the other parties in writing.
3. Beginning with the date of termination, the FHWA and NDOT shall ensure that until and unless a new Agreement is executed for the actions covered by this Agreement, such undertakings shall be reviewed individually in accordance with 36 CFR §800.

G. Confidentiality

All parties to this Agreement acknowledge that information about historic properties, potential historic properties, or properties considered historic for

purposes of this Agreement are or may be subject to Nebraska Revised Statute 84-712.05 and the provisions of Section 304 of NHPA. Nebraska Revised Statute 84-712.05 stipulates that records or portions of records may be withheld from the public if these records would reveal the location, character, or ownership of any known archaeological, historical, or paleontological site in Nebraska when necessary to protect the site from a reasonably held fear of theft, vandalism, or trespass. Section 304 allows the head of a Federal agency or other public official receiving grant assistance, after consultation with the Secretary of the Interior to withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if the Federal agency determines that disclosure 1) may cause a significant invasion of privacy; 2) risks harm to the historic resource; or 3) impedes the use of a traditional religious site by practitioners. Having so acknowledged, all parties to this Agreement will ensure that all actions and documentation prescribed by this Agreement are, where necessary, consistent with the requirements of Section 304 of the NHPA.

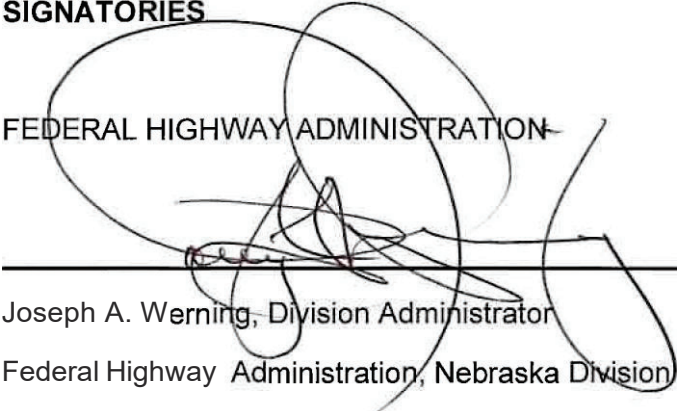
H. Duration of Agreement

1. This Agreement shall remain in effect for a period of five (5) years after the date it takes effect (the date the last party signs) unless it is terminated prior to that time. Six (6) months prior to the conclusion of the five-year period, NDOT will notify all parties in writing. If there are no objections from the Signatories, NDOT will amend the Agreement to extend its duration pursuant to Stipulation XII.D. If any party objects to extending the Agreement, or proposes amendments, NDOT will convene all signatories to consider amendments or other actions to resolve the objection pursuant to Stipulation XII.C (Resolving Objections).

2. Execution of this Agreement by FHWA, NDOT, SHPO, and ACHP and implementation of its terms evidence that FHWA and NDOT and have taken into account the effects of FAHP undertakings on historic properties, afforded ACHP an opportunity to comment, and has complied with Section 106 of the NHPA and 36 CFR Part 800 for the FAHP and its individual undertakings.

SIGNATORIES

FEDERAL HIGHWAY ADMINISTRATION

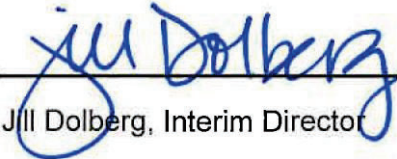


Joseph A. Werning, Division Administrator
Federal Highway Administration, Nebraska Division

12/23/2022

Date

NEBRASKA STATE HISTORIC PRESERVATION OFFICER



Jill Dolberg, Interim Director
History Nebraska

12/21/2022

Date

ADVISORY COUNCIL ON HISTORIC PRESERVATION



Sara C. Bronin, Chair
Advisory Council on Historic Preservation

Date: 2.1.2023

NEBRASKA DEPARTMENT OF TRANSPORTATION



John Selmer, P.E., Director
Nebraska Department of Transportation

12/21/22

Date

Appendix A

List of Certified Local Governments (03/22/2021)

FHWA and NDOT identified and invited the following Certified Local Governments to be consulting parties to the Agreement and any joint FHWA and NDOT undertakings.

Kim Berger
City of Auburn
1101 J St
Auburn, NE 68305

Jed Moulton
Omaha Planning Department
City of Omaha
1819 Farnam, Ste 1100
Omaha, NE 68183-1100

Laura Bedlan
City of Fairbury
612 D ST
Fairbury, NE 68352

Irv Portis
City of Plattsmouth
136 N 5th ST
Plattsmouth, NE 68048

Stacey L. Hageman
Preservation Planner
City of Lincoln
555 S 10th ST, Ste 213
Lincoln, NE 68508

Sue Meline
City of Red Cloud
540 North Webster ST
Red Cloud, NE 68970

Judy Clark
City of North Platte
211 West 3rd ST
North Platte, NE 69101

Megan McGown
City of Sidney
PO Box 79
Sidney, NE 69162

Appendix B

List of Tribes

FHWA and NDOT identified and invited the following Tribes to be consulting parties to the Agreement and any joint FHWA and NDOT undertakings.

Durrell Cooper
Chairman
Apache Tribe of Oklahoma
PO Box 1330
Anadarko, OK 73005

Crystal Lightfoot
THPO
Apache Tribe of Oklahoma
PO Box 1330
Anadarko, OK 73005

Jordan Dresser
Chairman
Arapaho Tribe of the Wind River Reservation,
Wyoming
PO Box 396
Ft Washaki, WY 82514

Ben Ridgley
THPO
Arapaho Tribe of the Wind River Reservation,
Wyoming
PO Box 396
Ft Washaki, WY 82514

Reggie Wassana
Governor
Cheyenne and Arapaho Tribes
PO Box 167
Concho, OK 73022

Max Bear
THPO
Cheyenne and Arapaho Tribes
700 Black Kettle Blvd
Concho, OK 73022

William Nelson, Sr
Chairman
Comanche Nation of Oklahoma
PO Box 908
Lawton, OK 73502

Martina Minthorn
THPO
Comanche Nation of Oklahoma
#6 S.W. D Ave., Ste C
Lawton, OK 73502

Peter Lengkeek
Chairman
Crow Creek Sioux Tribe of the Crow Creek
Reservation, South Dakota
PO Box 50
Fort Thompson SD 57339

Merle Marks
THPO
Crow Creek Sioux Tribe of the Crow Creek
Reservation, South Dakota
PO Box 286
Fort Thompson SD 57339

Timothy Rhodd
Chairman
Iowa Tribe of Kansas and Nebraska
3345 B. Thrasher Rd.
White Cloud, KS 66094

Mr. Lance Foster
THPO
Iowa Tribe of Kansas and Nebraska
3345 B, Thrasher Rd
White Cloud KS 66094

Edgar B Kent Jr.
Chairman
Iowa Tribe of Oklahoma
335588 E. 750 Rd
Perkins, OK 74059

Amy Scott
THPO
Iowa Tribe of Oklahoma
335588 E. 750 Rd
Perkins, OK 74059

Lynn Williams
Chair
Kaw Nation
PO Box 50
Kaw City, OK 74641

Lester Randall
Chairman
Kickapoo Tribe of Indians of the Kickapoo
Reservation in Kansas
824 111th Drive
Horton, KS 66439

Clyde Estes
Chairman
Lower Brule Sioux Tribe
PO Box 187
Lower Brule, SD 57548

Donna Fisher
President
Northern Cheyenne Tribe of the Northern
Cheyenne Indian Reservation, Montana
PO Box 128
Lame Deer, MT 59043

Teanna Limpy
THPO
Northern Cheyenne Tribe of the Northern
Cheyenne Indian Reservation, Montana
PO Box 128
Lame Deer, MT 59043

Kevin Killer
President
Oglala Sioux Tribe
PO Box 2070
Pine Ridge SD 57770

Thomas Brings
THPO
Oglala Sioux Tribe
PO Box 2070
Pine Ridge SD 57770

Leander Merrick
Chairman
Omaha Tribe of Nebraska
PO Box 368
Macy, NE 68039

Dwight Howe
THPO
Omaha Tribe of Nebraska
PO Box 368
Macy, NE 68039

John R. Shotton
Chairman
Otoe-Missouria Tribe of Indians
8151 Hwy 177
Red Rock, OK 74651

Elsie Whitehorn
THPO
Otoe-Missouria Tribe of Indians
8151 Hwy 177
Red Rock, OK 74651

Walter Echo-Hawk
President
Pawnee Nation of Oklahoma
PO Box 470
Pawnee, OK 74058

Matt Reed
THPO Director
Pawnee Nation of Oklahoma
PO Box 470
Pawnee, OK 74058

Oliver Little Cook
Chairman
Ponca Tribe of Indians of Oklahoma
20 White Eagle Dr.
Ponca City, OK 74601

Staci Hesler
THPO
Ponca Tribe of Indians of Oklahoma
121 White Eagle Dr.
Ponca City, OK 74601

Rebecca Sullivan
Acting Chairman
Ponca Tribe of Nebraska
PO Box 288
Niobrara, NE 68760

Stacy Laravie
THPO
Ponca Tribe of Nebraska
PO Box 288
Niobrara, NE 68760

Joseph "Zeke" Rupnick
Chairperson
Prairie Band Potawatomi Nation
16281 Q Road
Mayetta, KS 66509

Raphael Wahwassuck
THPO
Prairie Band Potawatomi Nation
16281 Q Road
Mayetta, KS 66509

Rodney Bordeaux
President
Rosebud Sioux Tribe of the Rosebud
Reservation
PO Box 430
Rosebud, SD 57570

Ione Quigley
THPO
Rosebud Sioux Tribe of the Rosebud
Reservation
PO Box 809
Rosebud, SD 57570

Tiauna Carnes
Chairperson
Sac & Fox Nation of Missouri in Kansas and
Nebraska
305 North Main ST
Reserve, KS 66434

Gary Bahr
THPO
Sac & Fox Nation of Missouri in Kansas and
Nebraska
305 North Main ST
Reserve, KS 66434

Justin Wood
Principal Chief
Sac & Fox Nation, Oklahoma
920883 South Highway 99 Building A
Stroud, OK 74079

Chris Boyd
THPO
Sac & Fox Nation, Oklahoma
920883 South Highway 99 Building A
Stroud, OK 74079

Judith Bender
Chairwoman
Sac & Fox of the Mississippi in Iowa
349 Meskwaki Rd
Tama, IA 52339

Johnathan Buffalo
THPO Director
Sac & Fox of the Mississippi in Iowa
349 Meskwaki Rd
Tama, IA 52339

Roger Trudell
Chairman
Santee Sioux Nation
108 Spirit Lake Ave West
Niobrara NE 68760

Misty Flowers
THPO
Santee Sioux Nation
425 Frazier Ave N Ste 2
Niobrara NE 68760

Mark Fox
Chairman
Three Affiliated Tribes of the Fort Berthold
Reservation, North Dakota
404 Frontage Rd
New Town, ND 58763

Allen Demaray
THPO
Three Affiliated Tribes of the Fort Berthold
Reservation, North Dakota
404 Frontage Rd
New Town, ND 58763

Terri Parton
President
Wichita and Affiliated Tribes (Wichita, Keechi,
Waco & Tawakonie), Oklahoma
Anadarko, OK 73005

Robin Williams
THPO
Wichita and Affiliated Tribes (Wichita, Keechi,
Waco & Tawakonie), Oklahoma
Anadarko, OK 73005

Victoria Kitcheyan
Chairwoman
Winnebago Tribe of Nebraska
PO Box 687
Winnebago, NE 68071

Sunshine Thomas-Bear
Tribal Historic Preservation Officer
Winnebago Tribe
601 E College Dr
Winnebago, NE 68071

Robert Flying Hawk
Chairman
Yankton Sioux Tribe of South Dakota
PO Box 1153
Wagner, SD 57380

Kip Spotted Eagle
THPO
Yankton Sioux Tribe of South Dakota
PO Box 1153
Wagner, SD 57380

Ms. Judi M. gaiashkibos
Executive Director
Nebraska Commission on Indian Affairs
PO Box 94981
Lincoln, NE 68509

Appendix C

Activities that are Undertakings with *no potential to cause effects to historic properties* pursuant to 36 CFR §800.3(a)(1). Projects of this type shall be reviewed for applicability and documented as a Tier I project, undertakings with *No Potential to Cause Effects to Historic Properties*.

	1. Acquisition of scenic easements.
	2. Grants for training, education and research programs which do not involve construction or ground-disturbing activities.
	3. Purchase of equipment or materials which do not involve construction.
	4. Ridesharing activities.
	5. Visual bridge inspections. Includes collection of physical samples (e.g., paint chips, timber pile cores) from the bridge structure. Note per the Bridge Inspection Minor CE: Soil adjacent to substructure components can be removed and replaced using hand tools. Excavations, limited to two feet in depth and within one foot of substructure components, are permitted to verify the condition of the substructure and/or aid in sample collection.
	6. Approvals for disposal of excess ROW or for joint or limited use of the ROW previously purchased with federal funds, provided no properties over 50 years old are located on the property.
	7. Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels, as long as those parcels do not contain properties over 50 years old.

Appendix D

Actions or Activities (Undertakings) with Minimal Potential to Cause Effects which result in an effect determination of *No Historic Properties Affected*

Per Stipulation VII.B(3)(a) of the Agreement, certain NDOT transportation projects constitute an undertaking, as defined in 36 CFR 800.16(y) but pose little potential to affect historic properties included in or considered eligible for listing on the NRHP due to the nature of the activity and the specific scope of work. Projects of this type shall be reviewed for applicability and processed as a Tier II project; *no historic properties affected. This determination shall be documented on the "NDOT Tier II PQS Memo, Undertakings with Minimal Potential to Cause Effects form (Attachment A).*

Definitions and Requirements:

1. Historic Properties = NRHP Eligible or Listed Buildings, Districts, Objects, Sites, Structures
2. No activity can involve the acquisition of additional Right of Way (ROW) or easement (activities must be restricted to existing disturbed ROW and/or and permanent easements). Right of Entry is exempt as long as clearing, grubbing, or ground disturbance shall not occur.
3. If an activity is not on the list below, it does not qualify as exempt and must go through Section 106 review as described in Stipulation VIII of the Agreement.
4. A project that involves more than one of the activities found in Appendix D may still meet the scope and applicability of Appendix D unless other elements of the project require a higher level of effort, i.e., fieldwork. No activity can be a subset of a larger activity.
5. No new earthwork activity may occur on federal property or federally granted easement.
6. For the purposes of this Appendix, previously disturbed soils are present within the roadway prism and are generally found between the toe of roadway fill slopes, to the depth of previous disturbance or depth of roadway fill.

A. Grading and Earthwork	
1	Grading within the hinge point, not to exceed the depth of the existing fill. Ground disturbance is limited to existing fill material or previously disturbed soils.
2	Addition of fill material to expand existing fill slopes.
3	Sediment Removal and Scour Repair to as-built condition. Includes culvert cleaning, shoulder reconstruction, slide/slump debris removal, repair of erosional feature by filling voids, ditch cleanout to constructed elevation. Ground disturbance is limited to existing fill material or previously disturbed soils.
B. Lighting and Traffic Control	
1	Traffic signals, intersection lighting, pedestrian signals, Dynamic Message Signs (DMS) underpass lighting or railroad lighting within existing Right of Way (ROW). Conditions: in kind repair/replacement and/or ground disturbance is limited to existing fill material.
2	Repair, replace, or upgrade existing Signal Control Boxes or Junction Boxes. Applies to existing boxes only.
3	Installation and operation of Intelligent Transportation System elements such as cameras, weather stations, and traffic counters. Installation in existing fill material, previously disturbed soils or within existing conduit, and/or installation is on existing poles.
4	Pavement Marking. Does not occur on historic or NRHP eligible brick streets or highways.
5	Maintenance and replacement of highway signs on existing poles, new sign installation within existing fill material.
6	Improving existing bicycle and pedestrian lanes and paths on their existing alignments. Ground disturbance is limited to existing fill material.

7	Repair, replace, reset or upgrade of electronic variable message signs, traffic sensors, closed circuit television cameras, and highway advisory radio systems including remote controlled flashing signs support structures. Ground disturbance is limited to existing fill material.
	C. Asphalt and Concrete
1	Crack sealing, patching, pothole repair, overlaying, milling, resurfacing (including full depth replacement), in-place pavement recycle, diamond grinding, armor coat/chip seal (AST/BST), fog/slurry seal, microsurfacing, grooving, spall repair, joint sealing, installation of rumble strips, and pavement marking. This activity does not include actions on brick streets, brick highways, historic roads, or historic bridges. The maintenance or rehabilitation is limited to the existing surfaced areas with only minimal/negligible surface expansion, is the same as the existing vertical and horizontal alignments of the roadway, no ditching or drainage work is included. All staging areas can be limited to existing paved or previously disturbed surfaces only (e.g., surfaces with little to no vegetation due to previous disturbance). Ground disturbance is limited to existing fill material.
2	Shoulder and median repair and installation, all within the toe-of-slope: Includes shoulder building through the addition of pavement to existing shoulder, construction of turn lanes, bike lanes and medians, beveled edges and trench widening. Shoulder: Equipment must be confined to existing roadway and shoulder. Median: all activities are in existing median.
3	In kind Repair / Replacement of existing features such as curbs and gutters, sidewalks, ADA ramps and other features, within the existing Right of Way. Does not apply adjacent to a historic building or within a historic district.
4	ADA Ramp: Installation of ADA ramps within the existing Right of Way. Does not apply adjacent to a historic building or within a historic district.
	D. Bridges and Culverts (Not applicable to historic bridges, culverts or associated historic features)
1	Painting, cleaning, repair and replacement of bridge railings and associated guardrails.
2	Bridge deck repair or replacement. Includes: expansion joints, patching spalled areas, overlaying and repairing, timber plank replacement, milling and resurfacing, silica fume overlays.
3	Bridge Drainage System, in-kind repair or replacement. Includes plugging pipe, and repair/replacement of riprap, gabion structures, and concrete slabs within their existing footprint. Soil disturbance, including access to the structures, must be limited to fill areas or previously disturbed soils
4	Bridge Substructure, Pile Encasement. Reinforcement of piles with concrete sheaths including: addition of concrete encasement approximately 6 inches in diameter, placement of temporary fill for dewatering activities, Placement of coffer dams for dewatering activities. Soil disturbance, including access to the structures, must be limited to fill areas or existing disturbed areas.
5	Bridge Substructure, Abutment Slope Repair. In kind repair and/or replacement of existing concrete abutments. Soil disturbance, including access to the structures, must be limited to fill areas or existing disturbed areas.
6	Replacement or construction of portions of a bridge below the superstructure including all or part of the following foundation elements: abutments, undermined abutment caps, columns, wall piers, footings and pile caps. Soil disturbance, including access to the structures, must be limited to fill areas or existing disturbed areas.
7	Bridge Substructure: Repair. Includes the following activities: removal of concrete and rebar and the subsequent setting of pre-stressed concrete or steel beams placing of framework, rebar, and concrete. Soil disturbance, including access to the structures, must be limited to fill areas or existing disturbed areas.

8	Heat straightening and/or in-kind replacement of damaged steel beams. Soil disturbance, including access to the structures, must be limited to fill areas or existing disturbed areas.
9	Curb and Flume, Repair / Replacement / Installation. Soil disturbance, including access to the structures, must be limited to fill areas or existing disturbed areas.
E. Incidental Construction	
1	Bike / Scooter Stations, installation upon or within existing right-of-way when outside historic districts and not directly adjacent to historic properties.
2	Electric Charging Stations when located outside historic district boundaries and not located directly adjacent to historic properties.
3	Underground Utility Conduit, installation. Within existing fill material or previously disturbed soils.
4	Utility Poles and Underground Utilities, replacement, relocation, installation. Within existing fill material or previously disturbed soils.
5	Repair, replacement, or installation of highway safety hardware including guardrail, end terminals, attenuators, median barriers, and cable barriers. Work is within existing roadway toe-of-slope or in the median of a divided highway. Does not apply to historic bridges.
6	Repair / Maintenance of ROW fencing, limited to repair/replacing fence wire and fence posts only at existing fence post locations. Does not apply if grading is required.
F. Railroad	
1	Repair / Replacement of at-grade railroad crossing gates, lights, signs and the rail crossing driving surface. Work is limited to in kind replacement/repair and ground disturbance is limited to existing fill material or previously disturbed railroad Right of Way.
2	Repair, replace, or upgrade the crossing surface between the railroad tracks and ten feet outside the railroad tracks.
3	Repair, replace, reset, or upgrade of highway safety improvements including automatic flashing lights and gates, warning bells, and constant warning time track circuitry (train detection to activate lights and gates).
G. Miscellaneous	
1	Improvements to existing maintenance facilities, rest areas (excluding I-80 rest areas), and truck weigh stations less than 50 years old. Limited to improvements to the buildings and parking areas themselves and does not include disturbance to the total grounds of the facility.
2	Mowing or brush removal/trimming. Hand trimming, stumps are left in place. Does not apply when work occurs adjacent to or within the boundary of a historic property.
3	Activities that remain entirely within the roadway/trail cross-sections and fill locations that existed prior to an emergency event.

Attachment A
NDOT Section 106 PQS Forms

3



**Section 106 Tier I PQS Memo
No Potential to Cause Effects to Historic Properties**

Control No:		Project No:		Project Name:	
Date of Project Description:				Project Location:	

NDOT PQS Project Effects Determination:			
NDOT PQS Signature:		Date:	

Activities that are Undertakings with *no potential to cause effects to historic properties* pursuant to 36 CFR §800.3(a)(1).

	1. Acquisition of scenic easements.
	2. Grants for training, education and research programs which do not involve construction or ground-disturbing activities.
	3. Purchase of equipment or materials which do not involve construction.
	4. Ridesharing activities.
	5. Visual bridge inspections. Includes collection of physical samples (e.g., paint chips, timber pile cores) from the bridge structure. Note per the Bridge Inspection Minor CE: Soil adjacent to substructure components can be removed and replaced using hand tools. Excavations, limited to two feet in depth and within one foot of substructure components, are permitted to verify the condition of the substructure and/or aid in sample collection.
	6. Approvals for disposal of excess ROW or for joint or limited use of the ROW previously purchased with federal funds, provided no properties over 50 years old are located on the property.
	7. Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels, as long as those parcels do not contain properties over 50 years old.

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by NDOT pursuant to 23 USC 326 and the First Renewed Memorandum of Understanding dated September 17, 2021, and executed by FHWA and NDOT.

This undertaking has been reviewed under the programmatic agreement entitled Programmatic Agreement Among the Federal Highway Administration, the Nebraska State Historic Preservation Officer, the Advisory Council on Historic Preservation and the Nebraska Department of Transportation to Satisfy the Requirements of Section 106 for the Federal Aid Highway Program in the State of Nebraska (January 2023) and meets the requirements to be considered a Tier I Project.



**Section 106 Tier II PQS Memo
Undertakings with Minimal Potential to Cause Effects
No Historic Properties Affected**

Control No:		Project No:		Project Name:	
Date of Project Description:				Project Location:	

NDOT PQS Project Effects Determination:	<i>no historic properties affected</i>		
NDOT PQS Signature:		Date:	

Per Stipulation VII.B(3)(a) of the Programmatic Agreement Among The Federal Highway Administration, The Nebraska State Historic Preservation Officer, *The Advisory Council on Historic Preservation*, and *The Nebraska Department of Transportation To Satisfy The Requirements of Section 106 For The Federal-Aid Highway Program In the State of Nebraska*, certain NDOT transportation projects constitute an undertaking, as defined in 36 CFR 800.16(y) but pose little potential to affect historic properties included in or considered eligible for the NRHP due to the nature of the activity and the specific scope of work. Projects of this type shall be reviewed for applicability, and documented as a Tier II project, *no historic properties affected*, using this form.

Appendix D Section and Item Number(s) associated with this Project:

Section _____ Item No. _____

Tribal Consultation:

THPO/ Tribes	Correspondence Sent (date)	THPO/Tribal Response (date)	Comments

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by NDOT pursuant to 23 USC 326 and the First Renewed Memorandum of Understanding dated September 17, 2021, and executed by FHWA and NDOT.

This undertaking has been reviewed under the programmatic agreement entitled Programmatic Agreement Among the Federal Highway Administration, the Nebraska State Historic Preservation Officer, the Advisory Council on Historic Preservation and the Nebraska Department of Transportation to Satisfy the Requirements of Section 106 for the Federal Aid Highway Program in the State of Nebraska (January 2023), and meets the requirements to be considered a Tier II Project, Minimal Potential to Cause Effects.

Summary of Architectural / Structural Investigations

Historic Properties Identified Within APE (leave blank if none):

Property	ROW Needed? (Specify Type & Amount)

Sensitive Areas (leave blank if none):

Property	Address	STA	MM - MM

These Sensitive Area(s) shall be indicated on project plans. (Design)
No grading or project activities, including but not limited to, working, staging, borrowing, stockpiling, or storing material and/or equipment, shall occur within the boundary of the Sensitive Area(s). (Contractor)

Provide narrative to support <i>no historic property affected</i> finding of effect

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by NDOT pursuant to 23 USC 326 and the First Renewed Memorandum of Understanding dated September 17, 2021, and executed by FHWA and NDOT.

This undertaking has been reviewed under the programmatic agreement entitled Programmatic Agreement Among the Federal Highway Administration, the Nebraska State Historic Preservation Officer, the Advisory Council on Historic Preservation and the Nebraska Department of Transportation to Satisfy the Requirements of Section 106 for the Federal Aid Highway Program in the State of Nebraska (January 2023) and meets the requirements to be considered a Tier II Project.

NEBRASKA

DEPARTMENT OF TRANSPORTATION **Section 106 Tier III PQS Memo**
No Adverse Effect (or) Adverse Effect

Control No:		Project No:		Project Name:	
Date of Project Description:				Project Location:	

NDOT PQS Project Effects Determination:			
SHPO Concurrence:			Date:
NDOT PQS Signature:			Date:

Tribal Consultation:

THPO/ Tribes	Correspondence Sent (date)	THPO/Tribal Response (date)	Comments

CLG Consultation:

CLG	Correspondence Sent (date)	CLG Response (date)	Comments

Other Consulting Parties	Correspondence Sent (date)	Response (date)	Comments

Area of Potential Effects (APE)
APE considered is consistent with 36 CFR 800.16(d) – (Y/N):

Summary of Archeological Investigations

Summary of Architectural / Structural Investigations

Historic Properties Identified Within APE:

Archeological Site	ROW Needed? (Specify Type & Amount)	Architectural Property	ROW Needed? (Specify Type & Amount)

Sensitive Areas:

	MM - MM		MM – MM

*This/these Sensitive Area(s) shall be indicated on project plans. (Design)
 No grading or project activities, including but not limited to, working, staging, borrowing, stockpiling, or storing material and/or equipment, shall occur within the boundary of the Sensitive Area(s). (Contractor)*

Provide narrative supporting no adverse effect finding, or detail efforts to avoid an adverse effect finding:

Summarize mitigation:

Section 4(f): significant archeological site(s) within APE warranting preservation in place:

Archeological Site	Comment

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by NDOT pursuant to 23 USC 326 and the First Renewed Memorandum of Understanding dated September 17, 2021, and executed by FHWA and NDOT.

This undertaking has been reviewed under the programmatic agreement entitled Programmatic Agreement Among the Federal Highway Administration, the Nebraska State Historic Preservation Officer, the Advisory Council on Historic Preservation and the Nebraska Department of Transportation to Satisfy the Requirements of Section 106 for the Federal Aid Highway Program in the State of Nebraska (January 2023), as amended, and meets the requirements to be considered a Tier III Project.

Attachment B

NDOT Standard Specification 107.10 – Archaeological and Paleontological Discoveries (2017)

Should the contractor encounter any fossils, meteorites, Native American relics, or other articles of historical or geological interest, such articles shall become the property of the State. The Engineer shall be promptly notified when any such articles are uncovered, and the Contractor shall suspend operations in the area involved until such time that arrangements are made for their removal and preservation.